

AMENDED IN SENATE APRIL 8, 2015

AMENDED IN SENATE MARCH 25, 2015

SENATE BILL

No. 185

Introduced by Senator De León

February 9, 2015

An act to amend Section 16642 of, and to add Section 7513.75 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as amended, De León. Public retirement systems: Public Divestiture of Thermal Coal Companies Act.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments if it is in the public interest to do so, and providing that the prohibition satisfies specified fiduciary standards.

Existing law prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan, as specified, and requires these retirement systems to liquidate any investments in a company with business operations in Sudan. Existing law also prohibits these retirement systems from investing in a company that has specified investments in the energy sector of Iran, as defined, including in a company that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas.

This bill would prohibit the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a thermal coal company, as defined. This

bill would require the boards to liquidate investments in thermal coal companies on or before July 1, 2017, and would require the boards, in making a determination to liquidate investments, to constructively engage with thermal coal companies to establish whether the companies are transitioning their business models to adapt to clean energy generation. The bill would require the boards, in consultation with the Secretary of the California Environmental Protection Agency, to make a comprehensive assessment of the feasibility and implications of divesting the retirement system funds of additional fossil fuel investments, such as natural gas and petroleum. The bill would provide that it does not require a board to take any action ~~if the board determines and adopts findings that the action would violate~~ *unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the constitution.* The bill would make related legislative findings and declarations.

This bill would require, on or before January 1, 2018, these boards to file a report to the Legislature and the Governor, containing specified information, including a list of companies of which they have liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill's requirements, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7513.75 is added to the Government
- 2 Code, to read:
- 3 7513.75. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The combustion of coal resources is the single largest
- 6 contributor to global climate change in the United States.
- 7 (2) Climate change affects all parts of the California economy
- 8 and environment, and the Legislature has adopted numerous laws
- 9 to mitigate greenhouse gas emissions and to adapt to a changing
- 10 climate.
- 11 (3) The purpose of this article is to require the Public
- 12 Employees' Retirement System and the State Teachers' Retirement
- 13 System, consistent with, and not in violation of, their fiduciary

responsibilities, to divest their holding of thermal coal power as one part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution free energy resources.

(b) As used in this section, the following definitions apply:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profit-making purposes or to otherwise secure economic advantage.

(3) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company.

(4) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(5) "Thermal coal" means coal used to generate electricity, such as that which is burned to create steam to run turbines. Thermal coal does not mean metallurgical coal or coking coal used to produce steel.

(6) "Thermal coal company" means a publicly traded company that generates 50 percent or more of its revenue from the mining of thermal coal, as determined by the board.

(c) The board shall not make additional or new investments or renew existing investments of public employee retirement funds in a thermal coal company.

(d) The board shall liquidate investments in a thermal coal company on or before July 1, 2017. In making a determination to liquidate investments, the board shall constructively engage with a thermal coal company to establish whether the company is transitioning its business model to adapt to clean energy generation, such as through a decrease in its reliance on thermal coal as a revenue source.

(e) On or before January 1, 2018, the board shall file a report with the Legislature, in compliance with Section 9795, and the Governor, which shall include the following:

(1) A list of thermal coal companies of which the board has liquidated its investments pursuant to subdivision (d).

(2) A list of companies with which the board engaged pursuant to subdivision (d) that the board established were transitioning to clean energy generation, with supporting documentation to substantiate the board's determination.

(3) A list of thermal coal companies of which the board has not liquidated its investments as a result of a determination made pursuant to subdivision (g) that a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution and the board's findings adopted in support of that determination.

(f) In consultation with the Secretary of the California Environmental Protection Agency, the board shall make a comprehensive assessment of the feasibility of divesting the public employee retirement funds of additional fossil fuel investments, such as natural gas and petroleum, and its implications for the funds. A summary of this assessment shall be included in the report required by subdivision (e).

~~(g) This section does not require the board to take any action if the board determines and adopts findings, in good faith and based on publicly available information, that the action would violate the board's~~ *Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board* described in Section 17 of Article XVI of the California Constitution.

SEC. 2. Section 16642 of the Government Code is amended to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as

1 described in subdivision (d) of Section 7513.6, or contract
2 investment managers shall or may at any time sustain by reason
3 of any decision to restrict, reduce, or eliminate investments
4 pursuant to Sections 7513.6, 7513.7, and 7513.75.

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